

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

**BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, BAYER
S.A.S., and MERIAL LIMITED,**

Plaintiffs,

v.

CHEMINOVA, INC.,

Defendant.

Civil Action No. 10-cv-274

**BASF AGRO B.V., ARNHEM (NL),
WÄDENSWIL BRANCH, and
BAYER S.A.S.,**

Plaintiffs,

v.

**MAKHTESHIM AGAN OF NORTH
AMERICA, INC., and CONTROL
SOLUTIONS, INC.,**

Defendants.

Civil Action No. 10-cv-276

**PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS FOR 30 DAYS
PENDING ISSUANCE OF *MARKMAN* ORDER ON KIMURA PATENTS AND
RESOLUTION OF PLAINTIFFS' MOTION FOR CLARIFICATION**

Plaintiffs BASF Agro B.V., Arnhem (NL), Wädenswil Branch ("BASF"),
Bayer S.A.S. ("Bayer"), and Merial Limited ("Merial") (collectively, "Plaintiffs")
respectfully move the Court to stay all proceedings for 30 days in the cases captioned
BASF Agro B.V. et al. v. Cheminova, Inc., Civ. A. No. 10-274 (the "Cheminova case"),

and *BASF Agro B.V. et al. v. Makhteshim Agan of North America, Inc., et al.*, Civ. A. No. 10-276 (the “MANA case”).

For the reasons set forth in Plaintiffs’ Brief in Support of its Motion to Stay, filed herewith, the Court’s May 27, 2011 Memorandum Opinion and Order [D.I. 173 (MANA case)] denying Plaintiffs’ Motion for Preliminary Injunction materially altered the status of these cases.

A 30-day stay in each case will allow the Court sufficient time to complete its *Markman* order, and to review Plaintiffs’ forthcoming motion for clarification of the Court’s May 27, 2011 Opinion and Order, which will be filed within the next week. This stay will also allow the parties to assess the impact of the Court’s May 27 Opinion and Order, and supplement expert reports, summary judgment briefs, and other related papers.

A 30-day stay is limited in duration, the balance of hardships among the parties favors such a stay, and a 30-day stay would promote judicial economy by avoiding duplicative litigation.

For the foregoing reasons, Plaintiffs’ respectfully request the Court to enter a 30-day stay in all proceedings in the Cheminova and MANA cases. A proposed order is attached.

Respectfully submitted:

**WOMBLE CARLYLE SANDRIDGE & RICE,
PLLC**

DATED: June 1, 2011

/s/ Robert T. Numbers, II

Pressly M. Millen (NCSB No. 16178)
Robert T. Numbers II (NCSB No. 34134)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
pmillen@wcsr.com
rnumbers@wcsr.com
phone: (919) 755-2100
fax: (919) 755-2150

*Attorneys for Plaintiffs
BASF Agro B.V., Arnhem (NL), Wädenswil Branch
and Bayer S.A.S.*

Of Counsel:

Kenneth A. Gallo
Craig Benson
Kent Kemeny
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
2001 K Street NW
Washington, DC 20006-1047
kgallo@paulweiss.com
cbenson@paulweiss.com
kkemeny@paulweiss.com
phone: (202) 223-7300
fax: (202) 223-7420

John E. Nathan
Catherine Nyarady
Kripa Raman
Brian P. Egan
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
jnathan@paulweiss.com
cnyarady@paulweiss.com

kraman@paulweiss.com
began@paulweiss.com
phone: (212) 373-3000
fax: (212) 757-3990

*Attorneys for Plaintiff
BASF Agro B.V., Arnhem (NL), Wadenswil Branch*

Robert J. Koch
MILBANK, TWEED, HADLEY & MCCLOY LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
rkoch@milbank.com
phone: (202) 835-7500
fax: (202) 835-7586

Attorney for Plaintiff Bayer S.A.S.

ALSTON & BIRD, LLP

/s/ Jitendra Malik, Ph.D.
Jitendra Malik, Ph.D. (NCSB No. 32809)
ALSTON & BIRD, LLP
Suite 4000
101 South Tryon Street
Charlotte, NC 28280-4000
Tel.: (704) 444-1115
Fax.: (704) 444-1695
jitty.malik@alston.com
*Attorney for Plaintiff
Merial Limited*

Of Counsel:

Judy Jarecki-Black, Ph.D.
MERIAL LIMITED
3239 Satellite Blvd.
Duluth, GA 30096-4640
Tel.: (678) 638-3805
Fax: (678) 638-3350
judy.jarecki@merial.com

Frank G. Smith, III
John W. Cox, Ph.D.
Matthew W. Howell
ALSTON & BIRD, LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
Tel.: (404) 881-7000
Fax: (404) 881-7777
frank.smith@alston.com
john.cox@alston.com
matthew.howell@alston.com

Deepro R. Mukerjee
ALSTON & BIRD, LLP
90 Park Avenue
New York, NY 10016-1387
Tel.: (212) 210-9501
Fax: (212) 922-3881
deepro.mukerjee@alston.com

J. Patrick Elsevier, Ph.D.
JONES DAY
12265 El Camino Real, Suite 200
San Diego, CA 92130
Tel.: (858) 314-1200
Fax: (858) 314-1150
jpelsevier@jonesday.com

Counsel for Merial Limited

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the **PLAINTIFFS' MOTION TO STAY ALL PROCEEDINGS FOR 30 DAYS PENING ISSUANCE OF *MARKMAN* ORDER ON KIMURA PATENTS AND RESOLUTION OF PLAINTIFFS' MOTION FOR CLARIFICATION** with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following CM/ECF participants: Greg Holland, greg.holland@smithmoorelaw.com, Marta E. Gross, mgross@goodwinprocter.com, Joseph B. Crystal, jcrystal@goodwinprocter.com, Michael Beck, mbeck@goodwinprocter.com, April E. Abele, aabele@goodwinprocter.com, Andy H. Chan, achan@goodwinprocter.com, and Thadeus Matthew Creech, matt.creech@smithmoorelaw.com.

This the 1st day of June, 2011.

/s/ Robert T. Numbers, II

Pressly M. Millen (NCSB No. 16178)
Robert T. Numbers, II (NCSB No. 34134)
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC
150 Fayetteville Street, Suite 2100
Raleigh, NC 27601
Telephone: (919) 755-2100
Facsimile: (919) 755-2150
Email: pmillen@wcsr.com
Email: rnumbers@wcsr.com

Attorneys for Plaintiffs
BASF Agro B.V., Arnhem (NL), Wädenswil Branch
and Bayer S.A.S.

Of Counsel:

Kenneth A. Gallo
Craig Benson
Kent Kemeny
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
2001 K Street NW
Washington, DC 20006-1047
phone: (202) 223-7300
fax: (202) 223-7420
kgallo@paulweiss.com
cbenson@paulweiss.com
kkemeny@paulweiss.com

John Nathan
Catherine Nyarady
Kripa Raman
Brian P. Egan
Jayson L. Cohen
PAUL, WEISS, RIFKIND, WHARTON
& GARRISON, LLP
1285 Avenue of the Americas
New York, NY 10019-6064
phone: (212) 373-3000
fax: (212) 757-3990
jnathan@paulweiss.com
cnyarady@paulweiss.com
kraman@paulweiss.com
began@paulweiss.com
jlcohen@paulweiss.com

*Attorneys for Plaintiff
BASF Agro B.V., Arnhem (NL), Wadenswil Branch*

Robert J. Koch
MILBANK, TWEED, HADLEY & MCCLOY LLP
1850 K Street, N.W., Suite 1100
Washington, DC 20006
phone: (202) 835-7500
fax: (202) 835-7586
rkoch@milbank.com

Attorney for Plaintiff Bayer S.A.S.